

## HARYANA GOVERNMENT

## LABOUR DEPARTMENT

The 8th April, 1982

No. 9(1)82-8Lab/3034.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s The Indian Aluminium Cables Ltd., 12/1, Mile-stone, Delhi, Mathura Road, Faridabad:—

IN THE COURT OF SHRI HARI SINGH  
KAUSHIK,

PRESIDING OFFICER,

LABOUR COURT, HARYANA  
FARIDABAD.

Reference No. 179 of 1981

between

SHRI OM PARKASH, WORKMAN AND  
THE RESPONDENT-MANAGEMENT OF  
M/S THE INDIAN ALUMINIUM  
CABLES LIMITED, 12/1, MILESTONE,  
DELHI, MATHURA ROAD,  
FARIDABAD.

Shri Sagar Ram Gupta for the work-  
man.

Shri K. P. Aggarwal for the res-  
pondent-management.

## AWARD

This reference No. 179 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana vide his order No. ID/FD/244-80/27962, dated 4th June, 1981, under section 10(1)(c) of the Industrial Disputes Act, 1947, existing between Shri Om Parkash, workman and the respondent-management of M/s The Indian Aluminium Cables Limited, 12/1, Mile-

stone, Delhi, Mathura Road, Faridabad. The terms of the reference was:—

Whether the termination of services of Shri Om Parkash was justified and in order? If not, to what relief is he entitled?

Notices were issued to the parties, on receiving this reference order. They appeared and filed their pleadings. The case of the workman according to demand notice is that he joined the service on 10th January, 1977, as Driver and worked on the car No. DHE 4157 and was removed from service on 10th May, 1979 without any reason and cause shown to the workman. The respondent did not pay the wages from March to June, 1979. The action of termination was illegal, unjustified and against the principles of natural justice amounts to bad and unfair labour practice. So the workman is entitled for the reinstatement with back wages and continuity of service.

The case of the respondent according to written statement is that the claimant did not fall within the definition of the workman as defined under section 2(s) of the Industrial Disputes Act, so there is no industrial dispute in existence between the parties. The claimant was the personal driver of the President of the company for driving the car allowed by the company. His duty was to remain in attendance of the President at all times. His entire control and direction vested in the President exclusively and he was paid in cash direct by the President from his personal accounts and he was never paid by the company. No E.S.I. or Provident Fund was ever paid by him on his wages, throughout his entire tenure of service. No leave (privilege, casual, sick) or other benefit were ever claimed by him throughout his service. The claimant started flouting the orders of the President and taking lesser interest in his work, so his services were terminated, as no charge-sheet or notice was necessary in this case. The claimant is gainfully employed and is earning a handsome amount after leaving his services. So the workman is not entitled to any relief and the reference may be filed.

On the pleadings of the parties, the following issues were framed :—

- (1) Whether the claimant is not a workman under section 2(s) of the Industrial Disputes Act ? If so, to what effect?
- (2) Whether the termination of services of the workman is proper, justified and in order ? If not, to what relief is he entitled ?

My findings on issues is as under :—

#### ISSUE NO. 1:

The respondent did not produce any evidence on this issue and did not press it at the time of arguments. The burden of proving this issue was on the respondent because he raised the objection in his written statement. So the issue is decided in favour of the workman and against the respondent.

#### ISSUE NO. 2:

Issue No. 2 is as per reference ? The representative of the respondent argued on this issue that the claimant as stated by the President of the respondent company, Shri R. P. Chaudhry as MW-1, was the personal driver of the car for his personal use and no appointment letter was given to the workman at the time of his appointment. He was appointed by the President as he has stated in his statement. The President has to look after the two plants of the company, one at Faridabad and other at Gaziabad. For this purpose the company has allowed a car to him for which he has to engaged a driver of his own choice as has to pay the salary from his own accounts. As stated by MW-1. Shri R. P. Chaudhry, he look after two plants of the company for this purpose, the car was allowed to him. He has further stated he used to have the control and supervision over this driver. The concerned company was taken over by the present management as stated by the witness and there was no driver on the roll of the company at the time of taking up the company. He has stated that the claimant was the personal driver

of the witness. He further argued that as the claimant was the personal driver of the President so no appointment letter was issued by the company and no wages are paid by the company as paid to the other workmen. The workman has also admitted in his cross-examination that he used to get his salary from Mr. Jhunjhunwala, Manager and not from the cashier of the company as other workmen used to get. There is no E.S.I. or Provident Fund deduction from the wages of the workman during his tenure of service of about two years. The representative of the management argued it was suggested him in the cross-examination of the workman about any complaint for not deduction of E.S.I. and Provident Fund from the wages which the workman had replied that no complaint to any company officer or any labour authority was made. He further argued that how he can be employee of the company without proving that he used to get the pay from the company, the attendance in the company or any E.S.I. or Provident Fund which is the proof of the employee of the company. The claimant has not proved by any way that he was the employee of the company. He has not mentioned or summoned any voucher or any attendance register of the company to prove this fact or he has not stated in his statement that he marked his attendance in any register or having any attendance card which shows that he was employee of the company and not employee of the President as stated by MW-1. When there is no proof of like this with the claimant or summoned the same to prove this fact it shows that the claimant has no proof of being an employee of the company. The claimant had produced one identity card, Exhibit W-1 which is given to the claimant on his asking as stated by Shri R. P. Chaudhary MW-1 that on pretext that police question during night, so he requires the identity card so it was given to him and not as an employee of the company. The workman has also produced a certificate, Exhibit W-2 which is not genuine one because the letter head are available in the company which might have taken by the claimant and get it typed and got signed by Shri M. R. Garg, Assistant Manager which has no authority

to sign the same certificate. Moreover, the certificate did not bear the number and date of the company for issuing such certificate. Shri M. R. Garg was the employee of the company, who left it two years back and the claimant might have got it signed from him anywhere and not in the company as admitted by the claimant in his cross-examination. That this certificate was taken by him after leaving the service for the new job which shows that the certificate is not genuine and not issued by the company. The workman has produced the lodge-book, Exhibit W-3 to Exhibit W-6 but in his cross-examination he has stated that he knows only one number of car DHE-4157 and other he do not remember. The lodge book cannot be believed because in these lodge-book the signature of the claimant did not appear and it did not prove that the claimant was the employee of the company. The lodge-book is maintained by the driver and has signed by the officer who use the car. As stated by the workman in his cross-examination on the suggestion of the representative that it is used for house hold purposes and the car used to bring the officer in the company and goes back in the evening. He has further replied the suggestion in his cross-examination that the claimant has to took the permission of the President every time to go when he is required. It shows that the claimant was the personal driver of the President and not of the company. The workman in his cross-examination has also admitted the fact that the President stopped him from the work and not by any other person. It shows that he was the personal driver of the President. The workman further stated that he used to ask for the wages to the President and not other person and the wages were received by him on voucher and not on the register as other workmen used to get in the company. He further argued that the demand notice of the workman was refused by the Government and the information regarding the rejection of the demand notice was received by the workman and the workman applied to re-consider his demand notice,—vide Exhibit W-7, to the Labour Commissioner, Haryana, Chandigarh on which this refer-

ence was sent for adjudication, which is illegal in the eye of law because when the demand notice rejected by the Government once on the ground that the claimant was personal driver of the President and not of the company and after that the case is referred for adjudication without giving any opportunity to the respondent to be heard is not proper under the law. For referring for adjudication the company must be heard at that stage without this the reference is bad in the eye of law. So the claimant was not the employee of the company as decided by the Government previously and has proved by the company in the Court and the reference may be rejected.

The representative of the workman argued on this issue that the arguments put forward by the representative of the respondent that no record was summoned by the workman to prove this fact that he was the employee of the company as no other witness from the company was produced by the workman to corroborate his statement that he was employee of the company, is wrong because it was on the respondent to prove this issue that the termination is justified or not and not on the workman to prove this issue. The workman has produced the identity card bearing the date of appointment of the workman and the signature of the Personal Officer proves that the claimant was the workman and this fact has admitted by the witness of the respondent that the identity card is issued from the company as issued to other employees of the company. The arguments put forward by the representative of the respondent that the identity card was issued on the asking of the workman. It is issued to the claimant as usual as issued to other employees and not on the asking of the claimant. The company appointed the claimant as Driver in the month of January, 1977 and because he was deputed with the President to drive the car which was allowed by the company and registered in the name of the company. The workman had no time to ask from the office about his E.S.I. and Provident Fund. The car is maintained by the company and expenses were also met by the company.

and the claimant used to drive the car for all officers of the company for different purposes as stated by the workman in his statement as WW-1. The car is maintained in the company accounts and the vehicle were used for bringing the officers in the company and used to do the office work as like going to the Excise Office and Electricity Office and other work of the company. The lodge-book which is maintained in the vehicle which are Exhibit W-3 to Exhibit W-6 and these lodge-books bears the signature of Pitter Furtado, Shri Ahuja, Manager and Shri J. C. Kajanchi and Shri Jhunjhunwala, Manager. The vehicle was used for the company's duty and the company had issued the identity card, Exhibit W-1 which is given to all the workmen of the company. He further argued that the workman asked the company for his E.S.I. and Provident Fund and whenever he asked the office for these things they threatened to remove the services, so he kept mum and not raised the question of E.S.I. and Provident Fund. The Identity Card is signed by the officer of the company as admitted by the respondent as MW-1 and the certificate, Exhibit W-2 was also admitted by MW-1 that it is signed by Mr. M. R. Garg who was previously Assistant Manager in the company. The certificate itself shows that he was the employee of the company, so the certificate was issued to the workman. The person who has signed the certificate has admittedly an employee of the company and he as the authority to sign such certificate. Though the witness MW-1 has denied this fact that he had no authority to sign such certificate. He further argued that the lodge-books produced by the claimant Exhibit W-3 to Exhibit W-6 are also admitted by the respondent which prove that the company officer used this car for the company's purposes and the persons working for factory purposes is an employee of the company and he was not the personal driver of the President. The Personal Driver would not work for the company functions. He further argued the WW-1 as stated in his statement that the company used to supply uniform and shoes from the stores also proves this fact that the claimant was the employee of the

company and the workman is entitled for his reinstatement as he was terminated without any termination letter or giving any notice.

After hearing the arguments of both the parties and carefully going through the file, I am of the view that the respondent has proved his plea taken in his written statement that the claimant was the personal driver of the President of the company and not employee of the company. The workman has stated in his statement that no appointment letter was given to him at the time of his appointment and no E.S.I. and Provident Fund was deducted from his wages and he used to get his pay from Mr. Jhunjhunwala, the manager of the company and not from the cashier as other workmen used to get. He has further stated that he used to get pay on vouchers and not on the registers as other employees of the company used to receive. He has further admitted that he was stopped for the work by the President and not by any other person. These all shows that he was the personal driver of the President and not of company. The company has no control over the workman as the workman stated in his cross-examination that if any one wants to use the car he has to take the permission every time for this purpose and without the permission of President he cannot remove the car. It shows the President has the full control over the workman. These all things shows that the claimant was the personal driver of the President of the company and not of the company. So this issue is decided in favour of the respondent and against the workman and in these circumstances, the workman is not entitled for any relief.

This be read in answer to this reference.

The 16th March, 1982.

HARI SINGH KAUSHIK;

Presiding Officer,

Labour Court, Haryana,

Faridabad.

Endorsement No. 675, dated 19th March, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

**HARI SINGH KAUSHIK,**

**Presiding Officer,  
Labour Court, Haryana,  
Faridabad.**

The 27th July, 1982.

No. 9(1)82-6 Lab.6608.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M's Haryana Seed Corporation, Yamuna Nagar.

**IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA FARIDABAD.**

Reference No. 15 of 1979 (336 Fbd of 1981)

between

**SHRI CHANDRIKA PARSHAD, WORKMAN  
AND THE RESPONDENT MANAGENT OF  
M.S. HARYANA SEED CORPORATION,  
YAMUNA NAGAR.**

Present:

Shri Balbir Singh, for the workman.  
Shri Wazir Chand Sharma, for the respondent.

#### AWARD

This reference No. 15 of 1979 (336-Fbd of 1981) has been referred to the Labour Court, Rohtak by the Hon'ble Governor of Haryana,—vide his order No. ID/YMN/63/78/2442, dated 12th January, 1979, under section 10(i) (c) of the Industrial Disputes Act, 1947 existing between Shri Chandrika Parshad, workman

and the management of M's. Haryana Seed Corporation, Yamuna Nagar. The terms of the reference was :—

Whether the termination of services of Shri Chandrika Parshad was justified and in order? If not, to what relief is he entitled?

Notice were issued by the Labour Court Rohtak after receiving this reference as it was referred to him. The parties appeared and filed their pleadings. The case of the workman according to his demand notice and claim statement is that his services were terminated on 18th November, 1977. The action of the said management is illegal and un-justified, as the workman was terminated without any prior notice. The workman completed 240 days of the employment and was getting Rs. 240 per month. The workman has requested for his reinstatement with continuity of service and with full back wages.

The case of the respondent is that the workman was employed as casual labour and he worked upto 10th February, 1978, thereafter he was employed as a daily man at the rate of Rs. 8.00 per day and not Rs. 240 per month. The respondent had clearly stated before the Conciliation Officer on 23rd February, 1978 that the name of the workman has not been removed till that date and the management was asked to take him on duty. He was asked by the Conciliation Officer to report for duty. It is wrong that the workman was terminated on 18th November, 1977. The workman worked upto 10th February, 1978. After the Conciliation Proceedings the respondent sent a registered letter on 3rd March, 1978 asking him to report for duty within 7 days. The said workman neither reported for duty nor sent any reply to the said notice. The respondent also sent a letter dated 23rd January, 1979 to the workman to join his duty as he was absent from duty on 18th November, 1977 and resumed duty on 17th January, 1978 and continued upto 10th February, 1978 and again absented himself. The workman was served with another notice dated 21st February, 1978 under registered cover asking him to resume duty within 3 days. The service of the workman were not terminated or retrenched on the part of the respondent at any stage and their action was nor illegal or unjustified. It is a case of self abandonment

of service by absented himself and not reported for duty inspite of notice sent by the respondent and the Conciliation Officer. So the reference is bad and may be dismissed.

On the pleadings of the parties, the following issues were framed:—

- (1) Whether the management terminated the service of the workman on 18th November, 1977? If not to what effect?
- (2) Whether the workman absented himself from duty and abandoned his job?
- (3) As per reference?

#### ISSUE NO. 1 :—

The representative of the respondent argued on this issue that the workman appeared as WW-2 and admitted in his cross-examination that after 18th November, 1977 he had worked with the respondent Corporation for 18 to 19 days and after this period he received his wages and his attendance was also marked in the attendance register clearly prove that the workman was not terminated on 18th November, 1977. The respondent has stated clearly in his statement that the workman was absent from duty on 18th November, 1977 and he was sent a letter to resume his duty. Then he resumed his duty on 17th January, 1978 to work up to 21st February, 1978. The respondent witness MW-1 Shri Surinder Pal Singh, Deputy Director, Agriculture has stated that the workman was employed in the Corporation as casual and daily paid worker and also stated that the workman worked up to 18th February, 1978 and his services were not terminated on 18th November, 1977 and he was shown in the employment as casual daily worker which is also admitted by the workman. The workman also examined one witness MW-1 Shri Mohd. Hadish a tailor master who has admitted in his cross-examination that on 18th November, 1977, the alleged date of termination, he himself was not in the employment of the corporation and he visited the corporation office for getting some paper signed. The statement of the witness is false and cannot be believed as he cannot produce any paper got signed on that day nor gave any authenticated

proof in this connection and when the workman admitted himself that the workman worked for 18 or 19 days in the corporation after 18th November, 1977. It requires no prove for proving the issue that the workman terminated on 18th November, 1977. If his services were terminated on 17th November, 1977 why he came and worked for 18 or 19 days after this date.

The workman's representative argued that the services of the workman were terminated on 18th November, 1977. The workman made complaint to this effect to the Labour Inspector and by his puruance the workman was taken on duty and after 18th February, 1978 the workman was again terminated.

After hearing the arguments of both the parties and going through the file, I am of the view that the workman himself has proved this issue by his admission in the cross-examination as WW-2. When he worked after 18th November, 1977 in the respondent management corporation for 18 or 19 days then his services were not terminated on 18th November, 1977. So the issue is decided in favour of the the respondent and against the workman.

#### ISSUE NO. 2 :—

The representative of the respondent argued on this issue that the alleged demand notice dated 9th January, 1978 states that the services of the workman terminated on 18th November, 1977 and when it is admitted by the workman in his cross-examination as MW-2 that he worked in the corporation after this day for 18 or 19 days. Thus it is not an industrial dispute as alleged by the workman on the alleged date of termination on 18th November, 1977 and even there after. He further argued that the Conciliation Officer, Yamuna Nagar called the parties for conciliation proceedings dated 23rd February, 1978. The respondent has stated him that his name is still on the roll of the corporation and they are ready to take him on duty. The Conciliation Officer sent the letter Ex. MW-1|2 to the workman to resume his duty. Even the respondent sent the letter dated 3rd March 1978 which is Ex. MW-1|3 through a registered post. The acknowledgement is Ex. MW-1|4 which bears the signature of the workman for giving the opportunity to the workman to resume his duty. He received the

letter but not resume his duty. The workman admitted in his cross-examination that he did not appear before the conciliation officer. His representative used to appear on his behalf. The workman did not come to report for duty even after this letter from the respondent and from the Conciliation Officer. The respondent sent the letter Ex. MW-1 through the registered post dated 21st February, 1978 in reply to demand notice on 9th January, 1978 in which it was clearly stated that you have failed to attend your duty after 10th February, 1978 and now you are advised to join your duty within 3 days of receipt of letter. He further argued that the respondent witness MW-1 has stated in his statement that the Corporation Plant works seasonally and did not operate through out the year. He stated that the plant operates only 2 or 3 months in May of every year and further stated that the workman was not turned out but he left his job of his own. The other witness of the respondent Shri O. P. Sachdev MW-2 has fully supported the version of the respondent and the facts stated by MW-1 that the workman was casual worker employed at the rate of Rs. 8.00 per day as admitted by the workman in his cross-examination. The respondent has produced the attendance and wages register to clear their position and confirm the fact stated before the Court. He further argued that the workman has failed to prove this fact by any evidence that he was terminated by the respondent. The workman failed to resume his duty even after 2 or 3 registered letters and letters from the Conciliation Officer, shows that the workman has abandoned the service of his own by serving himself from the duty.

The representative of the workman argued on this issue that the workman's service was terminated on 18th November, 1977 and he was taken on duty with the pursuance of the Labour Department and he was again terminated on 10th February, 1978. The workman came to join the duties in the respondent corporation, but he was not allowed the duties. The workman sent two demand notices dated 11th January, 1978 Ex. WW-2/A and dated 9th January, 1978 Ex. W-2 and received the reply Ex. W-1 from the Corporation dated 23rd January, 1978. The workman wants to work but the respondent did not give the duties to the workman and so terminated the service.

After hearing the arguments of both the

sides and going through the file, I am of the view that the workman has failed to resume his duties because the Conciliation Officer and the respondent sent the registered letter to the workman to resume his duties but he did not turn up as the workman's representative argued that the workman came to join the duty but he was not given duty cannot be believed in the absence of any evidence. The workman or his representative should have made the complaint in this respect to the Labour Inspector or to the Labour Officer as they have already done. When they failed to do the same it can not be believed that the workman came to join the duty and he was denied. So I agree with the respondent's representative and the issue is decided in favour of the respondent against the workman.

#### ISSUE NO. 3:—

After deciding above two issues in favour of the respondent, clears the position that the respondent has not terminated the services of the workman and there is no question of unjustification of the order of the respondent. The respondent has clearly given his version in the written statement and prove their case full well. Whereas the workman has failed to prove with any document of any kind. Though the case proceeded about 3½ years but the workman could not prove his plea of termination. So the workman is not entitled for any relief.

This be read in answer to this reference.

The 15th June, 1982

HARI SINGH KAUSHIK,

Presiding Officer,  
Labour Court, Haryana,  
Faridabad.

Endorsement No. 1446, dated the 26th June, 1982.

Forwarded (four copies) to the Commissioner & Secretary to Government Haryana, Labour & Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,  
Labour Court, Haryana,  
Faridabad.